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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/704,771	11/03/2000	Michael F. Marlin		4378

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EXAMINER

MILLER, BENA B

ART UNIT	PAPER NUMBER
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3712

DATE MAILED: 05/22/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/704,771

Applicant(s)

MARLIN, MICHAEL F.

Examiner

Bena Miller

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 22-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 23 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 23 and 24, there is lack of antecedent basis for the limitations "said coiled section".

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-24 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson et al.

Regarding claims 22 and 27, Wilson teaches in the figures most of the elements of the claimed invention, including a helical section (3), a handle being integral with said helical section (fig.2) and the handle comprising a straight section (fig.2). However, Wilson fails to teach a single, unitary wire that is made of metal material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the helical section of wire, since it has been held to be within the general skill of

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a worker in the art to select known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claim 22 and 23, Wilson fails to teach the helical section's length ranging from about two and three quarters inches to about six inches and the handle length ranging from about 3 ½ inches to about 6 ½ inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the helical section's length ranging from about two and three quarters inches to about six inches and the handle's length ranging from about 3 ½ inches to about 6 ½ inches since it known in the art to have the helical section and handle between the claimed range (Note: TopKayaker item on page 1, for example only) for the purpose of grasping the end of the handle.

Regarding claim 24, Wilson fails to teach the helical section's diameter ranging from about ¼ inch to about 1 inch. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the helical section's diameter ranging from about ¼ inch to about 1 inch since it known in the art to have the helical section (Note: TopKayaker item on page 1, for example only) for the purpose of providing a different size for different sized people (col. 1, lines 17-19).

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson in view of Bidwell.

Wilson teaches in the figures most of the elements of the claimed invention, as noted above. However, Wilson fails to teach words printed along the length of the coils. Bidwell teaches a spring member (fig.4) having a word ("graphic") printed thereon. It

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would have been obvious to one having ordinary skill in the art at the time the invention was made to apply printed words as taught by Bidwell in the helical section of Wilson for the purpose of providing excitement when bouncing the spring.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson in view of Molenaar.

Wilson teaches in the figures most of the elements of the claimed invention, as noted above. However, Wilson fails to teach a colored coiled toy. Molenaar teaches in figures 1-7 a coil spring toy (12) having a line in a configuration of a figure 42 made of paint, ink or colored plastic material secured or applied to the toy (col. 5, par. 7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply color as taught by Molenaar to the coiled toy of Wilson for the purpose of providing interest to the child when playing with the toy (col. 6, lines 13-16).

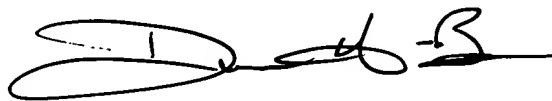
### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 703.305.0643. The examiner can normally be reached on Monday-Friday.

bbm  
May 16, 2003



**DERRIS H. BANKS  
SUPERVISORY PATENT EXAMINER  
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